
DATE: January 23, 1992
CASE NO. 84-ERA-13

IN THE MATTER OF

JOSEPH D. WAMPLER,

COMPLAINANT,

v.

PULLMAN-HIGGINS COMPANY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER TO SUBMIT SETTLEMENT AGREEMENT

By letter, dated April 12, 1990, Complainant through his counsel has requested reopening of the record in this case for the purpose of further proceedings on his complaint. *See* Letter from Ernest C. Hadley to the Office of the Administrator of the Wage and Hour Division, April 12, 1990 (Letter).[1] Specfically, Complainant requests that I vacate the Order, issued by Administrative Law Judge (ALJ) David W. DiNardi on March 26, 1984, which dismissed Complainant's claim with prejudice pursuant to 29 C.F.R. § 24.5(e)(4), and requests that the hearing on this claim be reopened.

As a basis for his request, Complainant alleges that, during the hearing begun on March 19, 1984, a settlement agreement was entered into by the parties and was approved by the ALJ. This agreement, Complainant now contends, "did not constitute a legal settlement agreement" because it contained an unenforceable provision -- namely " a provision which prevented Mr. Wampler from communicating any of his safety concerns to the Nuclear Regulatory

Commission." Letter at 2. It appears, therefore, that Complainant's purpose, six years later, is to nullify the 1984 settlement he now acknowledges.

Review of the record in this case does not reveal a copy of any settlement agreement nor any evidence that a settlement agreement nor any evidence that a settlement agreement was presented to the ALJ for approval.[2] Accordingly the parties are directed (1) to submit, within thirty days of receipt of this order, a copy of the settlement agreement signed by both parties, including Complainant individually, and setting forth all the terms and conditions, and (2) to set forth the extent to which they have performed their obligations under that agreement. The parties are invited to submit their views on the severability of any provision which prevents Complainant from communicating any of his safety concerns to the Nuclear Regulatory Commission.[3]

All documents filed shall be seved on the opposing party.

SO ORDERED.

LYNN MARTIN
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] Since Complainant has failed to served Respondent with a copy of this letter, a copy is attached to this Order for the purpose of accomplishing such service.

[2] According to the ALJ's Order, the ALJ dismissed Complainant's claim after being notified by Complainant that he withdrawing his objection to Wage and Hour Division's determination that Respondent had not discriminating discharged Complainant, and after the subsequent concurrence of Respondent's counsel to the dismissal. An ALJ's order of dismissal however, is not a final order. *See Milewski v. Kansas Gas & Electric Co.*, Case No. 85-ERA-0021, Sec. Order, Apr. 23, 1990, slip op. at 3, as modified by *Avery v. B & W Commercial Nuclear Fuel Plant*, Case No. 91-ERA-8, Sec. Final Order of Dismissal, Oct. 21, 1991. Because the Secretary has not issued a final order, this case remains open. Consequently, Complainant's request to reopen the record is denied.

[3] The presense in a settlement agreement of an unenforceable clause of the type described by Complainant does not automatically vitiate the entire agreement. *See McQuay v. The Waldinger Corporation*, Case No. 85-ERA-33, Secretary's Order Approving Settlement and Dismissing Case, May 31, 1990, severing the unenforceable provisions of settlement and approving the remainder of the agreement; *Polizzi v. Gibbs & Hill, Inc.*, Case No. 87-ERA-38, Secretary's Order, July 18, 1989.